



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR95-869

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33930.

The City of Garland (the "city") received a request for "copies of the police report, crime lab report, ballistics report, and all information on the investigation pertaining to the incident on March 11th/12th and death of . . . Gary Allen Akin." You state that the city has provided the requestor with the copies of the police dispatch tape, the autopsy report, and the front pages of the offense/incident reports.¹ You claim that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.101 of the Government Code. You have also submitted representative samples of the documents requested.²

¹We are unable to determine whether some of the submitted information is part of the autopsy report. We note, however, that autopsy reports are expressly made public under article 49.25 of the Code of Criminal Procedure and may not be withheld from disclosure. *See* Open Records Decision No. 529 (1989).

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You claim that section 552.103(a) of the Government Code excepts the requested information from required public disclosure. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the requestor and other members of the deceased's family have filed a civil rights complaint with the Federal Bureau of Investigation (the "FBI"), complaining of the Garland Police Department's handling of the shooting incident. In newspaper articles you have submitted to this office, the FBI has acknowledged that it has opened an investigation into this matter. We therefore conclude that there is reasonable anticipation of litigation.³ We also conclude, after reviewing the submitted sample documents, that they are related to the anticipated litigation. Therefore, with the exceptions noted in this letter, the city may withhold the requested information. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).⁴

We understand that the city has released to the requestor the first pages of two offense reports, one complaining of the deceased, the other complaining of the police officer. However, the city did not release the narratives of either of the reports. In Open Records Decision No. 597 (1991), this office concluded that once a defendant has been arrested and brought before a magistrate who informed him of the charges against him, there is no information in the basic offense report that would not have been made known to the defendant. *See also* Open Records Decision Nos. 349 (1982), 320 (1982) (no justification for withholding information that opposing party has seen). A narrative of

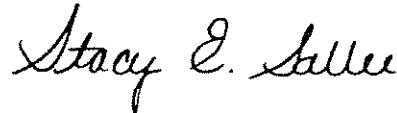
³You state that the requestor and the deceased's sister have threatened on several occasions to sue the city over the shooting of the deceased. However, you have not submitted any evidence to this office showing that they have retained an attorney or that an attorney has made demand on the city on their behalf.

⁴As we have concluded that the city may withhold the requested documents under section 552.103(a), we need not now address your claimed exceptions under section 552.101. However, if the city receives a subsequent request for these same documents, we suggest that the city re-submit to this office the documents and the city's arguments as to why section 552.101 excepts the documents from disclosure. This office will consider those arguments at that time.

the offense is one of the items that typically appears on the first page of an offense report. Open Records Decision No. 127 (1976). Therefore, the city may not withhold the narratives of offenses in which the suspect has been charged by the magistrate.⁵

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/RHS/rho

Ref.: ID# 33930

Enclosures: Submitted documents

cc: Ms. Jerrilyne Emmett
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Dallas, Texas 75214
(w/o enclosures)

⁵For the same reasons, the city may not withhold first-page offense report information from the arrest report of the requestor.